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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/533,211 | 04/28/2005 | Jaap Andre Haitzma | 2167.007US1 | 7069 |
| 21186 7590 03/11/2009 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402 | | | | |
| EXAMINER | | | | |
| PATIL, NIRAV B | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2435 | | | | |
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| 03/11/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/533,211

Applicant(s)

HAITSMA, JAAP ANDRE

Examiner

NIRAV PATEL

Art Unit

2435

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-8 and 12-27.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Kimyen Vu/
Supervisory Patent Examiner, Art Unit 2435

Continuation of 3. NOTE: The proposed amendment after final (claims 12, 15, 16, 26), would raise new issue that would require further consideration and/or thorough search.

The proposed amended claim 1 is not entered. Even if the amendment is entered, the cited prior art teach the claim limitation. See response below.

Continuation of 11 does NOT place the application in condition for allowance because: Applicant's arguments filed 02/16/09 have been fully considered but they are not persuasive.

Regarding to applicant's argument to claim 1 (with the features of claims 4 & 5), Examiner maintains since Cano's invention relates to system and method for comparing observed fingerprints against a huge database with reference fingerprints. After the extraction of the fingerprint, the module compares fingerprints from observed audio signals against reference fingerprints in the database (by performing matching process as describe in sec. Matching process, page 5 right column). Cano uses two different methods to perform the matching process (first exact matching and second approximate matching). Further, Wang teaches a method for recognizing an audio sample locates an audio file that most closely matches the audio sample from a database indexing a large set of original recording. For given pair of the sound samples, the database indexes are searched to locate potentially matching files. The matching fingerprints are differing by within previously determined thresholds (for either identical or similar fingerprints). Therefore, Wang teaches that threshold values determine the identical match or similar match for the matching fingerprints. Burgers teaches, the vector (a fixed length segment) is compared against a large set of stored, pre-computed vectors (fingerprints), wherein comparison occurs using two different sets of fingerprints and thresholds. Therefore, the combination of Cano, Wang and Burgers teaches similarity among different sets of the fingerprints and stored samples involved different threshold values for different matching process (exact matching and approximate matching), which meets with the claim limitation. The modification would be obvious because one of ordinary skill in the art would be motivated to recognize a content that is highly distorted and provide robust identification while also reducing a false negative rate. In KSR Int'l Co. v. Teleflex, Inc., 127 S. Ct. 1727, 1739 (2007), the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," and discussed circumstances in which a patent might be determined to be obvious without an explicit application of the teaching, suggestion, motivation test.